

## REMARKS

In the October 19, 2005 Office Action, claims 1-3, 6, 7 and 13-15 were rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention" (Office Action, page 2, lines 12-14). On pages 3-6 of the Office Action, claims 1-3, 6-8 and 13-15 were rejected under 35 USC § 103 as unpatentable over Gemmell (US Patent No. 6,6788,855) in view of Chiu (US Patent No. 6,505,253). Claims 1-3, 6-8 and 13-15 are pending and reconsideration is requested. The rejections are respectfully traversed below.

### Rejections under USC § 112

On pages 2 and 3 of the Office Action, claims 1-3, 6, 7 and 13-15 were rejected under 35 USC § 112, second paragraph as indefinite. It is submitted that the only proper reason for this rejection was the lack of antecedent basis for "the group generating unit" and "said determining unit" in claim 1. Claim 1 is herein amended to remove these terms; therefore, it is submitted that the claims meet the requirements of 35 USC § 112, second paragraph.

With respect to the preambles of claims 1 and 13, both are directed to "[a] computer-readable ... medium storing a program that when executed controls a computer to perform a multicast process" as recited at lines 1-2 of claim 13 with similar words in claim 1. Thus, claims 1 and 13 are examples of "a claimed computer-readable medium encoded with a computer program ... which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory" MPEP 2106.IV.B.1(b). It is submitted that the recitation of "the computer program's functionality" in the body of the claims does not make the claims indefinite.

For the above reasons withdrawal of the rejection under the second paragraph of 35 USC § 112 is respectfully requested.

### Rejections under USC § 103

On pages 3-6 of the Office Action, claims 1-3, 6-8 and 13-15 were rejected under USC § 103(a) as unpatentable over Gemmell in view of Chiu.

Claim 1 recites: "determining a number of times greater than one that each of the groups should be transmitted repetitively before the delivery destinations respond to delivery" (claim 1, lines 5-6). The Office Action ignored this limitation; nothing was cited or found in Gemmell that teaches or suggests the determining limitation of claim 1.

Further, the Office Action stated that claim 1 was rejected under USC § 103(a) as unpatentable over Gemmell in view of Chiu, but the Office Action failed to establish a case of *prima facie* obviousness in regard to the stated grounds of rejection because in the discussion of the rejection of claim 1 there was no mention of the Chiu reference. Hence, nothing was cited in Chiu that teaches or suggests motivation to modify Gemmell or combine Chiu with Gemmell and nothing was cited in Chiu that overcomes the deficiencies of Gemmell discussed in the preceding paragraph.

Claim 8 recites a determining limitation in a manner similar to that recited in claim 1. Dependent claims 2, 3, 6 and 7 depend from claim 1. Thus, claims 2, 3 and 6-8 distinguish over the applied references for the reasons discussed above in regard to claim 1.

Claim 13 recites: "calculating a total response processing time" (claim 13, line 9). The Office Action at page 4, lines 12-17 admitted that Gemmell did not disclose this limitation in claim 13. What was cited in Chiu as allegedly teaching this limitation states that

the sender application ... may choose to specify total size of the data that is being transferred and the duration within which the transfer has to take place (for example, a typical file transfer application). The sender TRAM can use these additional parameters to determine the average rate (Avg\_rate) of data transmission that needs to be achieved to complete the data transmission with the specified duration

(column 39, lines 30-35); in other words, an average data transmission speed is calculated, not "a total response processing time" as recited in claim 13; and

FIG. 12 is a table showing the timers used by TRAM. The T\_BEACON timer is the inter beacon message interval timer, and in an exemplary embodiment of the invention is set to 1,000 milliseconds (ms). The T\_BEACON\_FILLER timer is the inter beacon filler interval timer, and in an exemplary embodiment of the invention is set to 30 seconds (sec). The T\_ACK\_INTERVAL is computed at run time [not the total run time response] based on the current rate of data transmission and the size of the configured acknowledgment window

(column 35, lines 60-65). In other words, the only thing calculated in this citation is the T\_ACK\_INTERVAL, not "a total response processing time" as recited in claim 13. Nothing has been cited or found in Chiu that teaches or suggests the "calculating" limitation of claim 13.

Claim 13 also recites: "delivering control information including the total response processing time, to the delivery destinations so that the delivery destinations will respond at a randomly selected timing within the total response processing time after each group of data packets are received" (claim 13, lines 13-15). As discussed above, what was cited in Chiu (FIG. 12, column 35, lines 60-65; and column 39, lines 30-35) relates to an interval computed at run time, not the total response processing time. The additional description in Chiu that "[b]eacon messages transmitted by sender station 102 are also used in management of congestion control" (column 6, lines 56-58), as illustrated in FIG. 24 of Chiu, does not suggest the delivering operation recited in claim 13. Thus, nothing has been cited or found in Chiu that teaches or suggests the calculating and delivering operations recited in claim 13. Furthermore, nothing has been cited or found in Chiu that teaches or suggests motivation to modify Gemmell or to combine Chiu with Gemmell to correct the admitted deficiencies in Gemmell.

Dependent claims 14 and 15 depend from claim 13. Thus, claims 14 and 15 distinguish over the applied references for the reasons discussed in regard to claim 13.

#### **Entry of Amendment**

Entry of the Amendment and reconsideration of the claims is respectfully requested because the amendments place the application in better condition for appeal by overcoming the rejections under the second paragraph of 35 USC §112.

#### **Conclusion**

It is submitted that nothing has been cited in Gemmell and Chiu either combined together or taken individually that teaches or suggests the features of the present claimed invention. Thus, it is submitted that Claims 1-3, 6-8 and 13-15 are in condition for allowance.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

If there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

Serial No. 10/006,705

Finally, if there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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CERTIFICATE UNDER 37 CFR 1.8(a)  
I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on February 21, 2006  
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